IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Laxmi Narayan Vs. State of Rajasthan & Anr.

S.B.CR.MISC. PETITION NO.1084/2004

DATE OF ORDER :: October 09, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.K.L.Maheshwari, for the petitioner.
Mr.Ashok Upadhayay, P.P.
None present for non-petitioner No.2 though served.

BY THE COURT:

By the instant criminal misc. petition under section 482 Cr.P.C., the petitioner has challenged the order dt. 19.7.2001 passed by the Judicial Magistrate No.5, Jodhpur (for short 'the trial court' hereinafter), whereby the trial court took the cognizance of the offences under sections 466 and 468 I.P.C. and issued the process against the petitioner.

I have heard learned counsel for the petitioner and the Public Prosecutor for the State. Carefully gone through the order impugned.

It is contended by the learned counsel for the petitioner that the petitioner is a Sub-Inspector in the police and he was entrusted to the investigation in C.R.No.85/2000, Police Station, Mandore, Jodhpur. During the investigation, he prepared the site map, which according to the complainant has been forged. The petitioner is a public servant and protraction by way of sanction to prosecute as envisaged under section 197 Cr.P.C. is available to him. No sanction has been accorded to prosecute the petitioner under section 197 Cr.P.C. The act complained is alleged to have been committed while discharging the official duty as public servant. Learned counsel has relied on decisions of of Hon'ble Supreme Court in Nirupama Dey vs. Chaitanya Dalua & Anr., **2004 CRI.L.J.704,** Rakesh Kumar Mishra vs. State of Bihar & Ors., **2006 CRI.L.J. 808** and a recent decision of the Hon'ble Supreme Court in Sankaran Moitra vs. Sadhna Das & Anr., **AIR 2006 SC 1599**, wherein the Hon'ble Supreme Court has held that it cannot be said that want of sanctiion under section 197(1) Cr.P.C. did not affect the jurisdiction of the Court to proceed, but it was only one of the defences available to the accused and the accused can raise the defence at the appropriate time. Section 197(1), its opening words and the object sought to be achieved by it, clearly indicate that a prosecution hit by that provision can launched without the sanction contemplated. It is a condition precedent, as it were, for

a successful prosecution of a public servant when the provision is attracted, though the question may arise necessarily not at the inception, but even at a subsequent stage decision on this question cannot be postponed.

Keeping in view the aforesaid decisions of the Hon'ble Supreme Court and having regard to the facts and circumstances of the case and the fact that the act complained is alleged to have been committed while discharging the official duty as public servant and no sanction as contemplated under section 197 Cr.P.C. has been accorded to prosecute the petitioner, in my view, the order impugned cannot be sustained and is liable to be set aside.

In the result, the petition is allowed. Order impugned dt. 19.7.2001 is set aside. Stay petition also stands disposed of.

[H.R.PANWAR],J.

m.asif/-